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REMARKS

By this amendment, claims 1-10, 12-13, 15, 18, 20, 22-23, 30-34, 36 and 51-64 are pending in the application. Claims 16-17, 24-29, 37-50 and 65-69 remain withdrawn. Reconsideration of the case in light of the present arguments is respectfully requested.

Rejection Under 35 U.S.C. 103(a) of Claims 1-10, 12, 13, 15, 18, 20, 23, 30-32, 34, 36, 51-63 and 64

The Examiner rejected claims 1-10, 12, 13, 15, 18, 20, 22, 23, 30-32, 34, 36, 51, 52, 55-63 and 64 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,132,566 to Hofmann et al. in view of U.S. Patent No. 5,759,424 to Imatake et al. This rejection is traversed.

Hofmann et al. may not be used to form an obviousness rejection over the claims because, as stated in 35 U.S.C. 103(c);

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

Both Hofmann et al. and the present application were, at the time the invention of the present application was made, owned by Applied Materials, Inc, of Santa Clara, CA. Thus, Hofmann et al. is disqualified as a reference for 103 purposes, and Hofmann et al. can not be combined with Imatake et al. to reject the claims of the present application under 35 U.S.C. 103(a).

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Furthermore, the Examiner confirmed in a telephone conversation on April 15th, 2000, that Hofmann et al. is not available as a reference under 35 U.S.C. 102(a) because Hofmann et al. has an issue date of October 17th, 2000, which is after the filing date of the present application on September 21st, 2000. The Examiner agreed that the statement in the Office Action mailed on January 16, 2004 that "Hofmann et al is available under 35 U.S.C. 102(a)," was made in error. Accordingly, Hofmann et al. cannot be used to reject the claims of the present application under 35 U.S.C. 103(a).

The Examiner rejected claims 33, 53 and 54 under 35 U.S.C. 103(a) as being unpatentable over Hofmann et al. This rejection is traversed.

As discussed above, Hofmann et al. is disqualified as a reference for 103 purposes as Hofmann et al. and the present application are commonly owned. Accordingly, the claims of the present application may not be rejected under 35 U.S.C. 103(a) over Hofmann et al.

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CONCLUSION

The present application is believed to be in condition for allowance.
Should the Examiner have any questions regarding the above remarks, the Examiner is requested to telephone Applicant's representative at the number listed below.

Respectfully submitted,

JANAH & ASSOCIATES, P.C.

Date: April 16, 2004

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